

If the decree obtained by Albert and wife may be avoided as an undue and improper preference, under the act of 1834, ch. 293, and the deed to Winn and Ross is invalid for any reason whatever, why then there can be no doubt, I presume, that the property of Jones, the insolvent, has vested in his insolvent trustees, and that, in that character, they may apply to this court for relief against that decree.

It is said, however, that inasmuch as under the decree of Baltimore County Court, nothing more than the right of Jones in the property could have been sold, leaving untouched the title of the complainants thereto, that for that reason the interposition of this court by injunction was unnecessary. In the case of the *Union Bank vs. Poultney & Ellicott*, 8 Gill & Johns., 325, the Court of Appeals decided, that a party holding a prior lien on lands, could not, by injunction, restrain a subsequent judgment creditor from enforcing his judgment by execution, because a sale under such execution could neither defeat or impair the rights of the party holding the prior lien, which would remain unaffected thereby. But this injunction is not asked for by a party holding a prior lien ; but by parties who insist that anterior to the decree, they had, in view of the impending and irretrievable insolvency of their debtor, Jones, obtained an injunction from a court of competent jurisdiction, forbidding him from giving, and these defendants from receiving, from him, a preference over his other creditors, so far as the property called the Wheatfield Inn is concerned, (which is the very property about to be sold under the decree, and would have been sold, it is presumed, but for the injunction.) The complainants in this case cannot claim upon the ground of prior lien ; because the deed to them, of the 26th October, 1846, expressly excepts it from its operation, though there is a covenant to convey it when the impediments then existing should be removed, but which, if the decree of Baltimore County Court had been carried into execution by a sale of the property, never would have been removed.

This case, therefore, does not at all resemble the case of the *Bank and Poultney & Ellicott*, and must be subject to different